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Case No. ____ - ____

IN THE

Supreme Court of the United States

Richard Delene and Nancy Delene, Petitioners

v.

State of Michigan, Respondent

Petition for Writ of Certiorari to the

Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

Richard Delene and Nancy
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QUESTIONS PRESENTED FOR REVIEW

1. Can the Circuit Court of Baraga County, Michigan deny a petition for Writ of Mandamus and Prohibition to set aside a void judgement, which was filed in Ingham County, Michigan and which lacked subject matter jurisdiction because of improper venue, and statutes which have no application upon the petitioners by operation of law, pursuant to the 90 day rule found in MCLA Sec. 281.708(2), thereby violating our procedural and substantive rights to due process of law guaranteed by the United States Constitution, under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the right to petition for redress of grievances which is provided for under the First Amendment, by way of the Fourteenth Amendment to the United States Constitution and similar provisions of the Michigan Constitution, effectively denying access to the appellate process in Michigan?

2. Were our procedural and substantive due process rights, provided for in the constitutional provisions described above, violated by the Baraga County Circuit Court as guaranteed under the state statutes and the federal constitutional due process clauses described above?

3. Does a Michigan Court have the power to set aside and nullify the Northwest Ordinance of 1787, the Seventh Amendment to the US

Constitution and The Swamp and Overflow Act of 1850?

4. Does a Michigan Court have the power to set aside and nullify the Doctrine that patented land cannot be collaterally attacked?

5. Does a landowner have full use and dominion of his or her land?

LIST OF PARTIES

1. Richard Delene and Nancy Delene

2. The State of Michigan

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INTRODUCTION

We, Richard Delene and Nancy Delene, the petitioners, respectfully requests that a Writ of Certiorari issue to review the judgment of the Michigan Supreme Court entered on September 28, 2007 without findings of fact or conclusions of law.

OPINIONS BELOW

The ruling of the Circuit Court of Baraga County dismissing the petition for Writ of Mandamus and Prohibition was entered on October 19, 2006 without a formal written opinion. The final ruling by the Michigan Court of Appeals denying our Petition for Writ of Mandamus was issued on March 21, 2007, stating only that the Petition was denied.

BASIS FOR JURISDICTION

The Supreme Court of the United States of America has jurisdiction to hear this matter pursuant to Title 28 USC, Judiciary and Judicial Procedure, Section 2101(c), which provides for review of a state court judgment in a civil case. The ruling of the Michigan Supreme Court from which I seek review by this court was dated September 28, 2007. The Supreme Court granted petitioners leave to correct non-substantive errors in their petition for Certiorari on December 19, 2007. The corrected petition for Certiorari is due 60 days from the date of the Clerk's letter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article One, Clause 6 of the Bill of Rights, otherwise known as the First Amendment to the United States Constitution, which provides a constitutionally guaranteed unalienable right to "petition the government for redress of grievances". This case also involves Article Five, Clause 5 of the Bill of Rights, otherwise referred to as the due process clause of the Fifth Amendment to the United States Constitution, which states as follows; "No person shall.....nor be deprived of life, liberty or property, without due process of law". This case also involves The Fourteenth Amendment to the United States Constitution, Clause 3, otherwise referred to as the Due process clause of the Fourteenth Amendment, which states as follows; "nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The Northwest Ordinance of 1787 is also made part of this case pursuant to the clause under Article 2, which states: "The inhabitants of said territory shall also be entitled to.....and of judicial proceedings according to the course of the common law."

The Northwest Ordinance also states in part as follows: "The legislature of those districts or new States shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers."

Additionally, issues raised centering around the Seventh Amendment to the US Constitution which states as follows: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

The following Michigan State Statutes are involved;

MSA 13.796 [See Appendix for Text]

MSA 13.791 [See Appendix for Text}

MC.L.A. 281.708(2) [See Appendix for Text]

The following Federal Statutes are involved:
The Swamp and Overflowed Act of 1850. [See Appendix for Text]

STATEMENT OF THE CASE

A. Factual Context

In the spring of 1990, I, Richard Delene, one of the Petitioners, filed an application with Michigan state officials, the Michigan Department of Natural Resources, which subsequently transferred my responsibility and control over such matters to the Michigan Department of Environmental Quality hereinafter Michigan DEQ for a permit to build several ponds on my property in L'Anse Michigan. The ponds were designed to make the land more suitable for agriculture and to provide a reserve for ducks and geese and for other wildlife in the area. As an excavation contractor, I have built similar ponds on the subject land about ten years prior to that under an application which had been approved by the Army Corp of Engineers. By the 1990's the Army Corp of Engineers authorized the State of Michigan to operate the permit process. Under the existing Michigan statute at the time, the Wetlands Protection Act, and other statutes, the law stated that the application was, by operation of law, considered to be automatically approved if the Michigan state officials failed to act to accept or deny the application within 90 days of the completion of the application. The State of Michigan acknowledged receipt of the application on June 13, 1990.

After the passage of ninety-days (90), our attorney advised me that the application had been approved by operation of law, based upon the wording in the statute cited above. The State DEQ advised us in writing in November of 1990, that the application

had been denied, and after we had already begun the work on the ponds. After several years of dialog and threats by the Michigan DEQ, the Michigan Attorney general filed a civil action against us, the Petitioners, in Ingham County, Michigan Circuit Court on or about November, 1992. They did this in spite of the fact that several of the statutes we were charged with violating placed a requirement on the prosecutor to bring the civil action in the county where the land is located.

In addition, the Michigan DEQ and The Michigan DNR were aware that I built ponds for 11 years prior to the actions taken by the Michigan DEQ/Michigan DNR to restrain the pond construction on my property. If they knew that I had built these ponds earlier, and there was something wrong with that construction, they would have acted much earlier to restrain the construction of the earlier ponds.

We, Richard and Nancy Delene, the Petitioners, hired an attorney, who failed to file a response within the time required to respond to a lawsuit. Our attorney filed a motion for change of venue, which was denied. Although the attorney obtained approval to expand the time to file an answer until January 22, 1993, he failed to meet the deadline placing us in default and causing a default judgment to be entered. Our attorney failed to advise us of the implications of the default and failed to advise us of subsequent hearings held to enforce the default judgment, and required appearances at those hearings. Our attorney filed a motion to set aside, which contained a procedural flaw. In short the attorney did

everything possible to sabotage our legal defense.

B. Proceedings Below

I filed a petition for writ of mandamus and prohibition in the Circuit Court of Baraga County, Michigan on May 23, 2006, asking the court to set aside the void judgment from the Ingham County Court. We raised all of the constitutional issues advanced in this petition at that time. On October 19th of 2006, the Circuit Court of Baraga County, Michigan dismissed the petition on motion by the respondents without providing a findings of fact and conclusions of law.

We filed a substantially similar petition in The Michigan Court of Appeals in February 6 of 2006, raising all of the same issues. On March 21st, 2007, the Petition was denied, without any findings of fact and conclusions of law. We subsequently filed a Petition for Leave to Appeal in the Michigan Supreme Court on about September 28, 2007, raising all of the same issues raised in the previous mandamus petitions. Once again the petition was summarily denied with no findings of fact or conclusions of law.

REASONS FOR GRANTING THE PETITION.

I. THE FEDERAL SWAMP AND OVERFLOWED ACT OF 1850 SUPERSEDES THE STATE LAW RELIED UPON BY THE STATE OF MICHIGAN AND BARS THE ACTIONS TAKEN BY THE STATE AGAINST US.

The Swamp and Overflowed Act of 1850 mandates that patentees must drain the land and make it more suitable for agriculture. State agencies, acting against us, are in conflict with this doctrine.

A. The State Courts Have Acknowledged Rights Under Land Patents.

1. The standard of review in this instance is found in a Michigan Supreme Court case called Klais v. Danowski. In Klais v. Danowski, The Michigan Supreme Court stated as follows;

> "Here the United States conveyed a private claim of specific dimensions at a definite location. Determination of that location, as a we have done above, is conclusive of the occupants rights today. *They continue to own, through chain of title, what was granted to the patentees in the first place.*"
> [Emphasis supplied.]

See Klais v. Danowski, 373 Mich 262; 129 N.W. 2d 414 (1964). The decision in the Klais ruling relied upon the Northwest Ordinance of 1787 as its authority, along with the Act of Admission of Michigan into the Union.

2. The above-cited authority states that the rights originating from the land patents are conclusive and that those rights and obligations derived from the original land patent must be preserved today. We

believe that the Klais v. Danowski case is analogous and quite similar to the case before the court. Our rights and obligations with respect to the subject land are derived in part by a federal land patent.

B. The default judgment is in direct conflict with federal law.

1. The default judgment was issued in this matter in Ingham County, Michigan, Circuit Court, which is in direct conflict with federal law regarding land patents, specifically the Swamp And Overflowed Act of 1850, and subsequent federal legislation, which aided implementation of the Swamp Lands Act of 1850 in Michigan. The Swamp and Overflowed Act makes it mandatory for the patentee of lands issued under the federal patents originating from this act to maintain and drain the land so that it is made suitable for agriculture. This applies to the heirs and assigns of the original patentee. The Patentee is required to "construct the necessary levies and drains, to reclaim the swamp and overflowed lands." We, the Petitioners, Richard and Nancy Delene, are the current owners of the land in question, which was the subject of the void judgment discussed above. This land, by way of a chain of title, can be traced to a federal land patent issued under the above-cited federal legislation, and under which we are bound. This legislation supersedes state laws under which we were found liable in the Ingham County Case discussed in this matter.

2. Land patents under the Swamp Lands Act of 1850 require that the land be maintained and managed in

such a way that the land is suitable for agriculture.... building the ponds, drains, and berms in tandem is vital to prevent water from flowing onto land which can be used for agriculture and is essentially to fulfill obligations placed on the original transferee of the land patent. This obligation is also transferred to each and every subsequent land owner in the chain of title pursuant to the "heirs and assigns forever" clause in the land patent.

The land patent is carried forward and is binding upon the current owner as it was on each and every owner in the chain of title. These obligations and rights under the original land patent are still in force and effect today. In 1854, The United States patented to the State of Michigan the lands where the activities, which are complained of in the Ingham County Lawsuit, the building of ponds, occurred. In 1857 and 1858 Michigan enacted 2 statutes, which authorized the conveyance of these same federally designated swamplands to other parties by state patents. These statutes, still in effect today, impose upon the patentees and assigns, the right and the obligation to drain and reclaim the land pursuant to federal law, please see MSA 13.796 and MSA 13.791. In 1883 the State of Michigan, under these acts, patented the land, which is the subject of this Petition, to the Marquette and Houghton and Ontonagon Railroad Company and from them, through several landowners the land devolved to Richard and Nancy Delene as assigns from these patents.

The Petitioners, acquired the federally created right

to build levies and drain the land as necessary to reclaim the swamp. These rights are supreme power over all of the Michigan legislative enactments, which have been adopted since then and the state common law on public nuisance. Otherwise, state agencies will impair the Petitioner's right and duty to reclaim their swamp lands and because of the federal preemption of the state governments claims. Furthermore, the state has not demonstrated a public nuisance. The complaint filed by the State of Michigan in Ingham County, therefore, fails to state a claim for which relief can be granted.

3. The Ingham County Circuit court's default judgment is void where they have no jurisdiction to give The State of Michigan powers which are in direct conflict with and preempted by federal law, which is controlling, and where the State of Michigan does not have standing to enforce laws which controvert the federal law cited, The Swamp And Overflow Act of 1850. Therefore, the judgment issued against us in Ingham County must be declared void.

II. PATENTED LAND CANNOT BE COLLATERALLY ATTACKED.

It is well settled that patented land cannot be collaterally attacked. The applicable standard of review with respect to the principle that patented land cannot be collaterally attacked is found in a series of US Supreme Court cases issued throughout American history.

A. Collateral Attacks are strictly prohibited when it comes to patented land.

1. It is well settled that a patent for lands is conclusive in an action at law, as to the legal title, and cannot be collaterally impeached unless absolutely void on its face or issued without authority, see St. Louis Smelting and Refining Co. v. Kemp; 104 US 636, 26 L Ed 875, Davis v. Wiebbold, 139 US 507, 11 S. Ct. 628, Beley v. Naphtaly, 169 US 353, 18 S Ct. 354, Fenn v. Holme; 21 How 481, 16 L. Ed 198, Field v. Seabury; 19 How 323, 15 L. Ed 650. Additionally, only one having a prior right may attack a patent collaterally, see Doolan v. Carr, 125 US 618, 8 S. Ct. 1228. A patent is the highest evidence of title and is conclusive against the government and all claiming junior patents or titles, until it is set aside or annulled by some judicial proceeding, see United States v. Maxwell Land Grant Co.; 121 US 325, 7 S Ct. 1015, Stone v. US; 2 Wall 525, 17 L. Ed. 765. In an action of ejectment in state courts, when the question presented is whether the plaintiff or the defendant, has the superior legal title, from the United States, the Patent must prevail, Gibson v. Chouteau; 13 Wall 92, 20 L. Ed. 534.

Based upon the foregoing, it is clear that patented land cannot be collaterally attacked. To the extent that the State of Michigan take enforcement actions to enforce the void judgment, and violate our rights discussed in this petition, they are acting beyond the scope of their authority under the above-cited doctrines. The State of Michigan cannot collaterally attack patented land by way of recording liens, or

filing a writ of execution and conducting a Sheriffs sale.

2. The record shows that we are the assign to the original land patent. Adverse claims cannot attach to patented land. Therefore the void judgment issued by the Ingham County court against us cannot be applied against our land in Baraga County because it can be traced to a land patent.

III. IMPROPER VENUE AND JURISDICTION WAS INVOKED BY THE STATE, MAKING THE INGHAM COUNTY JUDGMENT VOID.

The standard of review in relation to venue in cases involving land is the case of McKenna v. Fisk, 42 US 241; 11 L. Ed. 117 (1843).

A. Substantive Due Process Rights Are violated where the State Courts Hear Cases in A Venue That is Not Local.

1. We believe that the Michigan courts, including the Michigan Court of Appeals are bound by the above US Supreme Court ruling regarding venue, see Abela v. GMC, 469 Mich 603; 677 N.W. 2d 325 (Sup. Ct. Mich, 2004), which states that Michigan courts are bound by the decisions of the United States Supreme Court.

The same doctrine in respect to local and transitory actions has been repeatedly affirmed in the courts

of the States of this Union. There is a significant public interest here in that the people of the State of Michigan have a reasonable expectation that the courts in Michigan will uphold the controlling case law regarding venue. The State of Michigan attempted to deprive us of our due process rights by filing a civil action in the wrong court. According to the authorities in law, the proper venue for a case in Rem involving land or any kind of real property is the county where the land is located since the case is local in nature and not transitory; see Central Transport Inc. v. Theurer, Inc., 430 F Supp. 1076 (1977) which states;

> "...the federal courts have consistently held that in a local action venue is only proper where the res is located. Moores Federal Practice para. 0.142[2.-1] and cases cited therein at footnote 4....."
> "If a Plaintiff, asserting rights involving property, seeks a remedy in or to that property which requires the court to have jurisdiction over the res to afford the relief sought then the action is in rem and local. The property must of necessity be subject to the jurisdiction of a court having power and control over the res; and since in rem service of process is all that is needed for the court to proceed, the venue just stated is a practical one that permits adjudication...."
> id. 1362-63 (citations omitted).

2. Thus, in local actions the true venue must be laid; that is the action must be brought in the county where the cause of action arose, where the property is situated in an action effecting real property, see Deacon v. Shreve, 23 N.J. L. 204. To the extent that county officials or state officials are asked to take enforcement actions to enforce the void judgment, they are acting beyond the scope of their authority and must be restrained by a writ of Mandamus and Prohibition. For the same reasons that the State of Michigan cannot record liens and execute a sheriffs sale of record a writ of execution based upon a default judgment where the State of Michigan [as in the Ingham County Case] did not issue and serve process in the proper venue. The decision of the Ingham County Court, which issued this void judgment, must be declare to be void. All courts in Michigan are bound by the above doctrine.

IV. FAILURE BY THE GOVERNMENT TO HONOR AND UPHOLD THE 90-DAY RULE FOUND IN M.C.L.A. 281.708(2) VIOLATES OUR DUE PROCESS RIGHTS

The ninety-day rule stated in M.C.L.A. 281.708(2), see appendix for the text, mandates that the State has a ninety-day time limit to deny an application for ponds being built under the above law, otherwise the permit is to be automatically granted by operation of law, see appendix, page 7a. This failure to adhere to the 90-day rule also renders the Ingham Court ruling void for lack of jurisdiction and venue. The action

taken by the Michigan Attorney General in filing a suit to enforce a law used to deny our application for a permit to build duck and geese ponds violates the 90 day rule in the above-cited statute, which also violates our the due process rights guaranteed under the due process clause of the Fifth and Fourteenth Amendments to the US Constitution.

A. Guarantees of Due Process Of Law under the Fifth and Fourteenth Amendment Mandates That the Government Honor and Uphold the Specific Provisions of its Own Statute Law Related To Time Limits For Permits.

1. The government has a duty to avoid depriving us of life, liberty and property without due process of law, as guaranteed under the Fifth and Fourteenth Amendments to the US Constitution, see Screws v. U.S., 325 U.S. 91 (1945). The refusal by the government to adhere to their own rule established by the state legislature related to when and under what circumstances the government can grant or deny a permit for construction of a pond is a blatant and pernicious violation of the due process rights of the petitioners. The permit was required to be granted by operation of law under M.C.L.A. 281.708(2), after the passage of 90 days and yet this requirement was ignored.

B. Michigan Government Agencies Have Acted Under Color Of Authority And Misused they Power.

In Screws v. U.S., supra, the Sheriff of Baker County, Georgia violated the due process rights of a black man in Georgia by beating him to death after they made an arrest but before placing him in the county jail. The US Supreme Court ruled that the Sheriff acted under color of law and deprived him of due process of law because they beat him to death prior to a trial, thereby depriving him of life and a right to a trial by jury for the crime for which he was arrested. The case at bar is similar and analogous to the Screws case cited above, in that the Attorney General of Michigan either knew or should have known that the 90-day rule, cited above, existed and was in effect at the time of the initiation of their lawsuit against us.

They proceeded against us, acting under color of law, because they knew they did not have the jurisdiction to proceed, given the wording in M.C.L.A. 281.708(2), mandating that the application for construction of a pond was granted by operation of law, if the application was not rejected or accepted by Michigan state officials after the passage of 90 days. "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action under color of state law.", see Screws v. U.S., supra.

V. NO PUBLIC TRUST EASEMENT EXISTS.

The State of Michigan never declared a public trust easement over the subject land, thereby cannot now

assume powers related to a public trust easement that does not exist.

A. When land is traceable to a land patent, the state does not have a public trust easement where they have not asserted a right to a public trust easement.

1. The land patent was transferred without a public trust easement being reserved on behalf of the State of Michigan. The state does not have a public trust easement where they have not asserted a right to a public trust easement in the land patent confirmation proceeding, see Summa Corp. v. California Ex Rel; 104 US 1751 (1984), which states;

> "We hold that California cannot at this late date, assert it's public trust easement over petitioner's property, when petitioner's predecessors-in-interest had their interest confirmed without any mention of such an easement in proceedings taken pursuant to the act of 1851."

2. The land in question is land, which the Michigan legislature specifically identified as land falling under the federal swamp lands mandate by which the property owner is required to adhere to federal law to drain and reclaim the lands. Not only did they not assert a public trust easement to prevent these activities, but they reaffirmed the obligations under federal legislation to drain and reclaim the lands in the state law cited. The patents have the force and

effect of treaty law, which supersedes state law.

3. To the extent that the State of Michigan takes actions to enforce the void judgment, they are acting beyond the scope of their authority and must be restrained by a writ of Mandamus and Prohibition. The State of Michigan does not have a public trust easement for our land and cannot act as if they do have one pursuant to Summa Corp v. California, supra.

VI. A RIGHT TO A COMMON LAW COURT IS MANDATORY.

The requirement for a common law court originates with the Seventh Amendment to the US Constitution and can be seen in a long line of US Supreme Court Cases, which is exemplified by 443 Cans of Frozen Egg product v. United States of America, 226 US 172, which states as follows:
"The Seventh Amendment to the Constitution preserves the right of trial by jury in suits at common law involving more than twenty dollars, and provides that no fact tried by a jury shall be reviewed otherwise than according to the rules of the common law."

A. The requirement for a common law court is settled by decisions of the US Supreme Court and state court rulings.

1. For further affirmation that common law

jurisdiction is mandated by the Seventh Amendment, please also see: The Sarah 8 Wheat. 391, 5 L. Ed. 644 50 at 51; United States v. La Vengeance (reported in 3 Dall. 297, 1 L.Ed. 610); United States v. The Sally (in 2 Cranch 406, 2 L.Ed 320 and United States v. The Betsy (in 4 Cranch 443, 2 Led. 673), Jones v. Jones; 188 Mo. App. 220 175 S.W. 227, 229; Ex Parte Gladhill, 8 Metc., Mass. 171, per Shaw, C.J.; 49 Mass 168; Ledwith v. Rosalski; 244 N.Y. 406, 155 N.E. 688, 689.

2. The Northwest Ordinance of 1787, under which the Michigan Courts are bound, also mandates common law courts under Article Two, and the act has force and effect in Michigan, see Klais v. Danowski, supra. The State of Michigan is attempting to deprive us of our right to due process of law as provided for under the Seventh Amendment. Common Law courts are mandated by the Seventh Amendment to the United States Constitution requiring that matters in controversy that exceed 20 (twenty) dollars must be adjudicated under the rules of the common law and by the Northwest Ordinance of 1787, Article Two, both of which are in force and effect in Michigan, since 1.) Michigan was part of the Northwest Territory and subject to the provisions of this act of Congress by virtue of that Act, and 2.) Michigan is subject to the Seventh Amendment to the United States Constitution, see 443 Cans of Frozen Egg Product v. United States of America, supra. The Ingham County civil case, which resulted in a default judgment, was adjudicated in an equity court and therefore does not meet the requirements for a common law court as required by the Seventh

Amendment.

2. We do not believe that either the Michigan DEQ or the Attorney General of Michigan can demonstrate that the Seventh Amendment to the United States Constitution has been repealed. Neither can they show that the Northwest Ordinance of 1787 is no longer in force and effect in Michigan, see Klais v. Danowski, supra. To the extent that the State of Michigan takes enforcement actions to enforce the void judgment, and violate our rights discussed in this petition, they are acting beyond the scope of their authority and must be restrained by a writ of Mandamus and Prohibition.

VII. A RIGHT TO FULL USE AND DOMINION OF LAND IS PARAMOUNT

In an early decision of the US Supreme Court it was established that landowners have full use and dominion of their land, see Fairfax v. Hunter, 7 Cranch, 603, 3 L. Ed. 453. The State of Michigan cannot exercise dominion over our land, since we alone can exercise such powers and, since the State of Michigan does not have any right, title or interest in our land.

A. Full Use And Dominion Is Defined In Terms Of The Ability of The Owner to Control and Govern His Own Land.

1. Use and dominion means that which is the union

of the title and the exclusive use of it; the owner has the power to direct, control, use and dispose of his own property at pleasure without being accountable, Dominion, according to Websters Original 1828 Edition of An American Dictionary of the English Language is defined as follows;

> "I, Sovereign or supreme authority; the power of governing or controlling. The dominion of the most high is an everlasting dominion. Dan. iv.2. Power to direct, control, use and dispose of at pleasure; right of possession and use without being accountable; as the private dominion of individuals."

See Websters 1828 American Dictionary of the English Language.

2. In Wallace v. Harmstad; 44 PA 492, 501 (1863) the Pennsylvania Supreme Court declared that all titles in Pennsylvania are allodial, and that the state does not retain an interest in private land. The court said; "I conclude, therefore, that the state is lord paramount to no man's land": Wallace v. Harmstad; Page 501 Supra. The above quote from the Wallace case illustrates that the highest courts in this nation fully recognize that private citizens have full use and dominion of their privately owned land.

B. The State of Michigan Cannot Exercise Dominion Over Our Land To The Extent Of Taking Control And Restricting Land Use That Does Not Impair others rights.

3. Where we are not injuring anyone or interfering with any ones rights, the state cannot impose restrictions on land use. The court's default judgment is void where they have no jurisdiction to grant the State of Michigan powers which we alone possess, and where the State of Michigan does not have standing.

4. To the extent that officials with the State of Michigan and Baraga County officials are asked to take enforcement actions to enforce the void judgment, and violate our rights to full use and dominion of our land they are acting beyond the scope of their authority.

They obtained the alleged judgment over us by unlawfully asserting dominion over our property. The alleged debt was the result of unlawfully asserting dominion over our land by way of compelling us to apply for a permit to build ponds and then bringing a court action against us in the wrong venue in Michigan. The State of Michigan has no authority to take dominion and control over land, which is private land.

VIII. VOID JUDGMENTS CANNOT OPERATE.

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties, Wahl v. Round Valley Bank, 38 Ariz. 411, 300 P. 955 (1931); Tube City Mining and Milling Co. v. Otterson, 16 Ariz. 305, 146 P. 203

(1914); and Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940). A void judgment, which includes a judgment entered by a court, which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court, Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999). A void judgment is one entered by a court without jurisdiction to enter such a judgment, State v. Blankenship, 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996). A void judgment cannot operate as law.

A. A Void Judgment establishes no rights, is a nullity and can be collaterally attacked at any time without time limits.

1. A void judgment can be collaterally attacked at any time by way of a mandamus petition or other means and is not subject to the kind of time limits to which an appeal is subject. The most notable case in Michigan on the subject of void judgments is Fritz v. Krugh, 354 Mich. 97 (1958).

> "A "void judgment" as we all know, grounds no rights, forms no defense to actions taken there under, and is vulnerable to any manner of collateral attack (thus here by habeas corpus). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and

> years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been."

FRITTS v. KRUGH, 92 N.W. 2d 604, 354 Mich. 97 (SUPREME COURT OF MICHIGAN, 1958).

A void judgment, such as may be vacated at any time is one whose invalidity appears on the face of the judgment roll, Graff v. Kelly, 814 P. 2d 489 (Okl. 1991). A void judgment is one that is void on the face of the judgment roll, Capital Federal Savings Bank v. Bewley, 795 P.2d 1051 (Okl. 1990), Roller v. Holly, 176 U.S. 398, 409.

2. A void judgment is one which, from its inception, was a complete nullity and without legal effect, Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972); Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (M.D. Fla. 1980); Holstein v. City of Chicago, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill 1992); Rubin v. Johns, 109 F.R.D. 174 (D. Virgin Islands 1985); In re Marriage of Parks, 630 N.E. 2d 509 (Ill. App. 5 Dist. 1994).

A void judgment is one where the court lacked personal or subject matter jurisdiction or entry of the order violated due process, Tirad Energy Corp. v.

McNell, 110 F.R.D. 382 (S.D.N.Y. 1986). A judgment is a void judgment if the court that rendered the judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree Loyd v. Director, Dept. of Public Safety, 480 So. 2d 577 (Ala. Civ. App. 1985). A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, City of Los Angeles v. Morgan, 234 P.2d 319 (Cal. App. 2 Dist. 1951), A void judgment, which is subject to collateral attack, is a simulated judgment devoid of any potency because of jurisdictional defects, Ward v. Terriere, 386 P.2d 352 (Colo. 1963); Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, certiorari denied, 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

B. A Void Judgment is Entered By A Court Which Lacks Jurisdiction Of Either Parties Or The Subject Matter.

1. A void judgment is one entered by a court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter a

particular order involved and such a judgment may be attacked at any time, either directly or collaterally, People v. Wade, 506 N.W. 2d 954 (Ill. 1987). A void judgment may be defined as one in which the rendering court lacked subject matter jurisdiction, lacked personal jurisdiction or acted in a manner inconsistent with due process of law, Eckel v. MacNeal, 628 N.E. 2d 741 (Ill. App. Dist. 1993). People v. Sales, 551 N.E. 2d 1359 (Ill. App. 2 Dist. 1990). Res judicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect, Allcock v. Allcock, 437 N.E. 2d 392 (Ill. App. 2 Dist. 1982). The judgment entered in Ingham County, which we sought to set aside in our Petition for Writ of Mandamus and Prohibition filed in the Baraga County court, must be set aside as void using the above-cited standards of review and the circumstances and events described in the Petition for Writ of Mandamus and Prohibition.

2. A void judgment is one entered by a court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity People v. Rolland, 581 N.E. 2d 907, (Ill. App. 4 Dist. 1991). A void judgment under federal law is one in which rendering the court lacked subject matter jurisdiction over the dispute or jurisdiction over parties, or acted in a manner inconsistent with due process of law or otherwise acted unconstitutionally in entering the judgment, Hays v. Louisiana Dock Co., 452 N.E. 2D 1383 (Ill. App. 5 Dist. 1983).

A void judgment has no effect whatsoever and is incapable of confirmation or ratification, Lucas v. Estate of Stavos, 609 N.E. 2d 1114, rehearing denied, and transfer denied (Ind. App. 1 dist. 1993); Stidham v. Whelchel, 698 N.E. 2d 1152 (Ind. 1998). A void judgment is one rendered by a court, which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process, U.S.C.A. Const. Amends. 5, 14 Matter of Marriage of Hampshire, 869 P.2d 58 (Kan. 1997). Judgment is void if a court that rendered it lacked personal or subject matter jurisdiction; A void judgment is one entered by a court without jurisdiction to enter such judgment, State v. Blankenship, 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996).

Relief from a void judgment is available when the trial court lacked either personal or subject matter jurisdiction, Dusenberry v. Dusenberry, 625 N.E. 2d 458 (Ind.App. 1 Dist. 1993).

IX. VOID JUDGMENTS MUST BE SET ASIDE AS THEY ARE A VIOLATION OF DUE PROCESS.

A void judgment is a nullity and may be vacated at any time. Matter of Marriage of Welliver, 869 P.2d 653 (Kan. 1994). A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process, see In re Estate of Wells, 983 P.2d 279, (Kan. App. 1999). A void judgment must be set

aside as it represents the worst kind of oppression when it used to circumvent the due process rights of the defendant in a civil case. A void judgment is one rendered in absence of jurisdiction over subject matter or parties 310 N. W. 2d 502, (Minn. 1981); Lange v. Johnson, 204 N.W. 2d. 205 (Minn. 1973).

A. While Voidable Orders Are Appealable And Must Be Attacked Directly, A Void Order May Be Circumvented By Collateral Attack And Remedied By Mandamus.

1. The most notable case in Michigan, providing an authority for the setting aside of void judgments is Fritz v. Krugh, 354 Mich. 97 (1958).

> "A "void judgment".....is vulnerable to any manner of collateral attack (thus here by habeas corpus). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been."

FRITTS v. KRUGH, 92 N.W. 2d 604, 354 Mich. 97 (SUPREME COURT OF MICHIGAN, 1958).

A void judgment is one, which has merely semblance,

without some essential element, as when the court purporting to render it has no jurisdiction, Mills v. Richardson, 81 S.E. 2d 409, (N.C. 1954); Henderson v. Henderson, 59 S.E. 2d 227, (N.C. 1950). A void judgment, such as may be vacated at any time is one whose invalidity appears on, the face of the judgment roll, Graff v. Kelly, 814 P.2d 489 (Okl. 1991); Capital Federal Savings Bank v. Bewley, 795 P.2d 1051 (Okl. 1990). Where the condition of a bail bond was that the defendant would appear at the present term of court, a judgment forfeiting bond for defendants bail to appear at a subsequent term was a void judgment within the rule that laches does not run against a void judgment, Com v. Miller, 150 A.2d 585 (Pa. Super. 1959).

2. While voidable orders are readily appealable and must be attacked directly, a void order may be circumvented by collateral attack or remedied by mandamus, Sanchez v. Hester, 911 S.W.2d 173, (Tex. App. Corpus Christi 1995) [Emphasis added].

B. Relief from Void Judgments is not Discretionary.

1. When the rule providing for relief from void judgments is applicable, relief is not a discretionary matter, but is mandatory, Orner v. Shalala, 30 F.3d 1307, (Colo. 1994). See also, In re Thomas, 906 S.W. 2d at 262.

For other authorities concurring, see Carter v. Fenner, 136 F.3d 1000, 1005 (5 th Cir. 1998), Lubben v. Selective Serv. Sys. Local Bd. No. 27, 453 F.2d 645,

649 (1st Cir. 1972), Roller v. Holly, 176 U.S. 398, 409, Small v. Batista, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998), Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE, (1973) Civil 2862.

2. Judgments entered where the court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, Jaffe and Asher v. Van Brunt, 158 F.R.D. 278 (S.D.N.Y.1994).

3. A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by a court that did not have jurisdiction over subject matter or the parties, Rook v. Rook, 353 S.E. 2d 756, (Va. 1987) ; State ex. rel. Turner v. Briggs, 971 P.2d 581 (Wash. App. Div. 1999); In re Adoption of E.L., 733 N. E. 2d 846, (Ill. App. 1 Dist. 2000); Cockerham v. Zikratch, 619 P.2d 739 (Ariz. 1980).

4. The party seeking to vacate a void judgment is invoking the ministerial powers of the court and courts lack discretion when it comes to vacating void judgments.

C. A Void Judgment Can Be Attacked At Any Time.

1. Action must be taken by anyone with an interest in setting aside a void judgment because it is a legal nullity and effects his or her rights. A void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any

time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, City of Lufkin v. McVicker, 510 S.W. 2d 141 (Tex. Civ. App. Beaumont 1973). A void judgment, insofar as it purports to be pronouncement of court, is an absolute nullity, Thompson v. Thompson, 238 S.W. 2d 218 (Tex. Civ. App. Waco 1951).

2. A void order which is one entered by a court which lacks jurisdiction over parties or subject matter, or lacks the inherent power to enter a judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before the court, People ex. rel. Brazica v. Village of Lake Barrington, 644 N.E. 2d 66 (Ill. App. 2 Dist. 1994).

D. Certiorari Is an Appropriate Remedy To Set Aside A Void Judgment.

1. On certiorari this Court may not review questions of fact. Brown v. Blanchard, 39 Mich 790. It is not at liberty to determine disputed facts (Hyde v. Nelson, 11 Mich. 353), nor to review the weight of the evidence. Linn v. Roberts, 15 Mich 443; Lynch v. People, 16 Mich 472.

Certiorari is an appropriate remedy to get rid of a void defendant's case, and his conviction and sentence would be void ab initio. See Patton v. Diemer, 35 Ohio St. 3d 68, 518 N.E. 2d 941 (1988).

E. Jurisdictional Challenges Require The Party Claiming Jurisdiction to Prove that Jurisdiction was proper.

When jurisdiction is challenged, the party claiming that the court has jurisdiction has the legal burden to prove that jurisdiction was conferred upon the court through the proper procedure. Otherwise, the court is without jurisdiction. The Ingham County Judgement we are seeking to abate by this petition, and actions below, is void for all of the above reasons cited and must be declared void by this court in the interest of justice, see Griffin v. Mathews 310 F. Supp. 341, 423 F. 2d 272; McNutt v. G.M. 56 S. Ct. 780, 80 L. Ed. 1135; Thompson v. Gaskiel 62 S. Ct. 673, 83 L. Ed. 111.

Whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject-matter jurisdiction to provide evidence from the record of the case that the court has jurisdiction, see Bindell v. City of Harvey, 212 Ill. App. 3d 1042, 571 N.E. 2d 1017 (1st Dist 1991). See also Loos v. American Energy Savers, Inc., 168 Ill. App. 3d 558, 522, N.E. 2d 841 (1988). ("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff.") The law places this duty upon the State of Michigan in the Ingham County case. We filed the mandamus petition to litigate these issues and asked the courts at every level to set aside the void judgement. We are therefore asking such relief from this court.

CONCLUSION

For all of the foregoing reasons the Circuit Court of Baraga County violated our procedural and substantive due process rights, which violated both state law and the United States Constitution. There can be no security for the inhabitants of a state, where the due process rights and access to due process is denied using a procedural or judicially constructed roadblock to the appellate process. The state then becomes a totalitarian regime. Baraga County's Circuit Court and all other reviewing courts denied justice and ignored the law. We therefore ask that the United States Supreme Court order the Circuit Court to grant the petition and issue the Writ of Mandamus and Prohibition.

We, furthermore, ask this court, in the interest of justice, to order that the sanction ordered by the Michigan Supreme Court for filing a "vexatious" petition be vacated.

Pro Hac Vice

Respectfully Submitted, Richard Delene
Nancy Delene

Richard Delene and
Nancy Delene
In-Care-Of
10672 Kenai Spur Highway
Kenai, Alaska 99611
(907) 776-7603

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APPENDIX

Michigan Supreme Court
ORDER

Clifford W. Taylor, Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corngan
Robert T. Young, Jr.
Stephen J. Markman
Justices

Dated September 28th 2007 Number 133810
COA: 274706
Baraga CC 06-005553-AW

On order of the court the application for leave to appeal the March 21st 2007 order of the court of appeals is considered and denied because we are not persuaded that the questions presented should be reviewed by this court. Costs of $250.00 are assessed against the Plaintiffs in favor of the Defendants under MCR 7.316(d)(1) for filing a vexations appeal. The Plaintiffs are barred from submitting additional filings in this court until they offer proof that they have paid all of their outstanding court imposed sanctions.

Signed by Clerk of the Michigan Supreme Court

S/
Stephen R. Dams
September 28, 2007
[Seal of Michigan Supreme Court]

Court of Appeals, State of Michigan
ORDER

Alton T. Davis
Presiding Judge

Richard Clovis Delene v.
Balaga County Circuit Court

William C.
Docket No. 274706 Witbeck, CJ

Bill Schuette
LC No. 06-005553-AW Judges

The Court orders that the complaint for mandamus is DENIED.

S/
Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

[Court Seal]

March 21, 2007 S/
Date Chief Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF BARAGA

RICHARD CLOVIS DELENE AND
NANCY MATILDA DELENE Plaintiffs

v. File No. 06-5553-AW

THE STATE OF MICHIGAN [Court
WENDY TOLLEFSON-GOODREAU, Stamp]
In her official capacity as the Baraga County Clerk, Register of Deeds, ROBERT TEDDY, in his official capacity as the Baraga County Sheriff, MICHAEL REYNOLDS, Administrator, Michigan Treasury Department, Collection Division, in his official and private capacity.
Defendants

ORDER GRANTING MOTION TO DISMISS

At a session of said Court held in the Courthouse in the City of Houghton, Houghton County, Michigan, on the 15th day of October, 2006.

Present: HONORABLE GARFIELD W. HOOD, Chief Circuit Judge.

Based on the respective Defendants Motions and all of the reasons asserted in support thereof, in the Defendants various briefs, Plaintiff's complaint is dismissed.

This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

S/
Garfield W. Hood
Chief Circuit Judge

Title 43 USC, Section 982. Grant to States to aid in construction of levees and drains

To enable the several States (but not including the States of Kansas, Nebraska, and Nevada) to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein - the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, A.D. 1850, are granted and belong to the several States respectively, in which said lands are situated: Provided, however,

That said grant of swamp and overflowed lands, as to the States of California, Minnesota, and Oregon, is subject to the limitations, restrictions and conditions hereinafter named and specified in this chapter, as applicable to said three last-named States respectively.

Legislative History:

R.S. Sec. 2479 derived from acts Sept. 28, 1850, ch. 84, Secs. 1, 4, 9 Stat. 520; Mar. 12, 1860, ch. 5, Sec. 1, 12 Stat. 3; Feb. 19, 1874, ch. 30, 18 Stat.16.

Title 43 USC, Section 983. Lists and plats of lands,
for governors of States

It shall be the duty of the Secretary of the Interior, to make accurate lists and plats of all such lands, and transmit the same to the governors of the several States in which such lands may lie, and at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said State therefor, conveying to said State the fee simple of said land.

The proceeds of said lands, whether from sale

or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the reclaiming of said lands, by means of levees and drains.
Legislative History:

R.S. Sec. 2480 derived from act Sept. 28, 1850, ch. 84, Sec. 2, 9 Stat. 519.

Title 43 USC, Section 984. Legal subdivisions mostly wet and unfit for cultivation

In making out lists and plats of the land aforesaid all legal subdivisions, the greater part whereof is wet and unfit for cultivation, shall be included in said lists and plats, but when the greater part of a subdivision is not of that character, the whole of it shall be excluded there from.
Legislative History:

R.S. Sec. 2481 derived from act Sept. 28, 1850, ch. 84, Sec. 3, 9 Stat. 519.

MSA 13.791 Swamp lands; commissioner to control

Sec. 1. That the swamp lands granted to said state by act of congress, approved September twenty-eighth [28th], one thousand eight hundred and fifty [1850] shall continue under the supervision of the commissioner of the state land office, and subject to sale by him, as hereinafter provided; but none of said lands be offered for sale prior to the issue of patents to the state therefore.

MSA 13.796

Certificate of sale, contents; patent; drainage.

Sec. 6. Purchasers of said lands, whether at public or private sale, shall be entitled to receive from the commissioner of the state land office a certificate of purchase, in which he shall certify the date of such purchase, the name of the purchaser, description of the land sold and the price for which the same was sold, which purchase money shall be paid to the state treasurer, or his agent, or other person duly authorized, and endorsed by him upon said certificate of purchase, and countersigned by the auditor general, in the form now in use in the certificates of purchases of state lands. Said certificates shall state that such purchaser, his heirs, or assigns shall be entitled to a patent for said land, to be executed by the governor, and upon the presentation and surrender of such certificate to the secretary of state, a patent shall issue to such purchaser or his assigns, as in cases now provided by law for the issue of patents, but no purchaser receiving such certificate or patent shall, by reason of such purchase, have any claims against the state for drainage, reclamation, or other improvements of such land which condition shall be inserted in all certificates of purchase and all such sales shall be made subject to drainage and reclamation by the purchaser, in accordance with the act of congress granting such land to the state.

MCLA 281.708(2)

If a hearing is not held, the department shall approve or disapprove the permit application within 90 days after the completed permit application is filed with the department. If a hearing is held, the department shall approve or disapprove the permit application within 90 days after the conclusion of the hearing. The department may approve a permit application, request modifications in the application or deny the permit application. If the department approves the permit application, the department shall prepare and send the permit to the applicant. If the department denies or requests a modification of the permit application, the department shall send notice of the denial or modification request, and the reasons for the denial or the modifications requested to the applicant. Department approval may include the issuance of a permit containing conditions necessary for compliance with the act. **If the department does not approve or disapprove the permit application within the time provided by this subsection, the permit application shall be considered approved, and the department shall be considered to have made the determinations required by section 9.** The action taken by the department may be appealed pursuant to Act No. 306 of the Public Acts of 1969, as amended. A property owner may, after exhaustion of administrative remedies, bring appropriate legal action in a court of competent jurisdiction. [Emphasis added.]

State of Michigan
[State of Seal]
James J. Blanchard, Governor
DEPARTMENT OF NATURAL RESOURCES
David F. Hales, Director
Baraga, Mi.
April 29, 1991

Natural Resources Commission
Thomas J. Anderson
Marlene J. Flumarty
Gordon E. Guyer
Kerry Kammer
Ellwood A. Mattson
O. Stewart Meyers
Raymond Poupore

Mr. Timmothy Brennan
Baraga County Prosecuting Attorney
5 East Baraga Avenue
L'Anse, Mi 49946

Dear Mr. Brennan,

I have received you letter regarding the wetland permit on the Delene property. Handling of this matter has been complicated by the fact that recent state budget cuts resulted in the elimination of the position occupied by Ginny Nash. Her case load has been transferred to the personnel working out of the Marquette office, and is in addition to their already existing case load.

I am forwarding your request to the Marquette office,

asking that they respond with the information you requested.

In partial answer to your inquiry, the 90 day time limit referred to in the memo from Ginny Nash is based on M.C.L.A. 281.708(2). This section gives the D.N.R. 90 days to respond to a permit application, and provides that the application shall be considered granted if not responded to within the 90 day period.

Please advise me if I can be of further assistance in this matter.

Sincerely,

S/

Dr. Jim Ekdahl
District Law Supervisor